

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PABLO TOBIAS NAVARRO, *individually and on behalf of others similarly situated*,

Plaintiff,

-v-

PGM NEW YORK, INC. (d/b/a MADISON BISTRO)
AND CLAUDE PHILIP GODARD,

Defendants.

12 Civ. 6663 (JMF)

MEMORANDUM OPINION
AND ORDER

JESSE M. FURMAN, United States District Judge:

Upon review of the parties' submissions, Plaintiff's Second Motion for Class Certification and Notice (Docket No. 29) is hereby GRANTED.

Although the question is a close one, Plaintiff has carried his "low" burden at this stage of making a "modest factual showing" that he and "potential opt-in plaintiffs together were victims of a common policy or plan that violated the law." *Myers v. Hertz Corp.*, 624 F.3d 537, 555 (2d Cir. 2010) (internal quotation marks omitted); *see also, e.g., Amador v. Morgan Stanley & Co. LLC*, No. 11 Civ. 4326 (RJS), 2013 WL 494020, at *2 (S.D.N.Y. Feb. 7, 2013) (noting that a plaintiff may rely "on [his] own pleadings, affidavits, [and] declarations" to support a motion for class certification (quoting *Hallsisey v. Am. Online, Inc.*, No. 99 Civ. 3785 (KTD)), 2008 WL 465112, at *1 (S.D.N.Y. Feb. 19, 2008)); *Lynch v. United Servs. Auto. Ass'n*, 491 F. Supp. 2d 357, 367-68 (S.D.N.Y. 2007) (noting that, on a motion for preliminary certification of collective action, the court does not resolve factual disputes, decide ultimate issues on the merits, or make credibility determinations).

Furthermore, after discovery, Defendants may move for decertification of the collective

action. *See, e.g., Davis v. Abercrombie & Fitch Co.*, No. 08 Civ. 1859 (PKC), 2008 WL 4702840, at *10 (S.D.N.Y. Oct. 23, 2008). “At that point, the court determines on a full record, and under a more stringent standard, whether the additional plaintiffs are in fact similarly situated.” *Id.* If the Court finds “that all plaintiffs are similarly situated, the collective action proceeds to trial; otherwise, the class is decertified and the claims of the opt-in plaintiffs are dismissed without prejudice.” *Id.*

Accordingly, and mindful that Defendants have not raised any specific objections to the Proposed Notice and Consent to Join Lawsuit forms, it is hereby ordered that:

1. The Court approves the form of Notice of Pendency and Consent to Join Lawsuit, in the *modified* form attached to this Order, and finds that the mailing of such Notice substantially in the manner and form set forth in paragraph 2 of this Order will constitute the best notice practicable under the circumstances to members of the Class. Plaintiffs may engage a third party notice administrator to facilitate mailing of the Notices to putative class members.

2. On or before thirty (30) days after entry of this Order, the plaintiffs or their designated representatives shall cause a copy of the Notice of Pendency and Consent to Join Lawsuit form, *as modified* by the Court and attached to this Order, to be mailed by first class mail to:

All current and former employees of PGM NEW YORK, INC. (d/b/a MADISON BISTRO) and CLAUDE PHILIP GODARD, and/or any other entities affiliated with or controlled by any one or more of the foregoing businesses and/or individuals, who performed restaurant labor as cooks, sous chefs, dishwashers, salad preparers, food runners, busboys, wait staff, and all other restaurant-related labor from August 31, 2009, through the present. Corporate officers, shareholders, directors, administrative employees, and other customarily exempt employees are not part of the defined class.

3. Within 15 days after entry of this Order, Defendants shall furnish to

Plaintiffs' counsel and the designated notice administrator a list containing the names and last known address of all individuals employed by Defendants from August 31, 2009, through the present. This mailing list is to be furnished in electronic form and shall be treated by the Parties as confidential.

4. The modified Notice of Pendency and Consent to Join Lawsuit form shall be published in English and Spanish. Plaintiffs' counsel shall file with the Clerk of the Court a certification from the Spanish interpreter retained to translate the modified Notice of Pendency and Consent to Join Lawsuit form.

5. Should a significant number of Notices be returned as undeliverable with no forwarding address, Plaintiffs reserve the right to apply to the Court for permission to cause a copy of this Notice, substantially in the same form attached hereto, to be published in a Spanish-language newspaper.

6. The deadline for a Consent to Join Lawsuit form to be postmarked or received by the Court shall be ninety days from the earliest date of mailing of the notice.


7. Discovery is hereby extended until three months after the end of the opt-in period.

8. The parties shall appear for a conference with the Court on September 10, 2013, at 3:15 p.m.

The Clerk of Court is directed to terminate the Motion for Conditional Collective Certification. (Docket No. 29).

SO ORDERED.

Dated: May 7, 2013
New York, New York



JESSE M. FURMAN
United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
PABLO TOBIAS NAVARRO, *individually and on
behalf of others similarly situated,*

Plaintiffs,

-against-

PGM NEW YORK, INC., (d/b/a MADISON
BISTRO) and CLAUDE PHILIP GODARD,
Defendants.

-----X

12 Civ. 3133 (JMF)

NOTICE OF PENDENCY

**IMPORTANT NOTICE
ADVISING YOU OF YOUR
LEGAL RIGHTS**

TO: All current and former employees of PGM NEW YORK, INC. (d/b/a MADISON BISTRO) and CLAUDE PHILIP GODARD, and/or any other entities affiliated with or controlled by any one or more of the foregoing businesses and/or individuals, who performed restaurant labor as cooks, sous chefs, dishwashers, salad preparers, food runners, busboys, wait staff, and all other restaurant-related labor from August 31, 2009, through the present, at Madison Bistro restaurant located at 238 Madison Avenue, New York, New York 10016. Corporate officers, shareholders, directors, administrative employees, and other customarily exempt employees are not part of the defined class.

If you worked for PGM NEW YORK, INC. (d/b/a MADISON BISTRO) or CLAUDE PHILIP GODARD (collectively referred to as “Madison Bistro or “defendants”) at any time since August 31, 2009, the purpose of this Notice is to advise you of this lawsuit, and to further advise you of certain rights you may have with respect to this action.

Plaintiff PABLO TOBIAS NAVARRO is a former employee who worked at Madison Bistro and who has brought this action on behalf of himself and all other current and former employees to recover unpaid minimum wages and overtime compensation (for all hours worked in excess of 40 per week) for which they have been incorrectly paid.

This lawsuit seeks the payment of minimum wages and overtime wages pursuant to the Fair Labor Standards Act (29 U.S.C. 201 et seq.) and New York State Labor Law allegedly owed to current and former employees of Madison Bistro who worked as restaurant workers. Corporate officers, shareholders, directors, administrative employees, and other customarily exempt employees are not part of the defined class.

You may be owed payment if you worked for Madison Bistro and were not paid at least the minimum wage for all hours worked. You may be owed payment even if you are an employee that received tips. You may be owed payment if Madison Bistro took any portion of your tips or gratuities. Lastly, you may be owed payment if you worked for Madison Bistro for

more than 40 hours per week and you were not paid overtime at time and one-half (1.5x) your normal hourly rate of pay for all hours actually worked over forty (40) hours each week.

Defendants vigorously deny any wrongdoing and/or liability to plaintiff or any other past or present employee who may allege that he or she was underpaid. Defendants strongly deny that any employee was underpaid for his or her work at any time.

This Notice is meant to advise you of your right to participate in this lawsuit as a claimant and plaintiff under the Fair Labor Standards Act if you believe that you were underpaid by Madison Bistro.

No determination has been made that you are owed any minimum wages, overtime wages or gratuities, and the Court is not endorsing the merits of this lawsuit or advising you to participate in this lawsuit. You are under no obligation to respond to this notice.

Federal law prohibits Madison Bistro from retaliating against you in any manner if you wish to join this lawsuit.

* * *

FEDERAL LAW CLAIMS

If you worked for Madison Bistro at anytime on or after August 31, 2009, you may be entitled to certain protection under the Federal Fair Labor Standards Act for all hours that you received less than the minimum wage for all hours worked. You may be entitled to these protections even if you are an employee that received tips. You may also be entitled to certain protection under the Fair Labor Standards Act for all work performed in excess of 40 hours each week when you may not have been paid one and one-half times (1.5x) your regular hourly wage rate.

If you wish to participate in this portion of the lawsuit, you must have the enclosed written "Consent to Join Lawsuit" form filed with the Clerk of the Court. If you do not sign and mail the "Consent to Join Lawsuit" form to the address listed below, you will not be permitted to seek recovery of unpaid wages under the Fair Labor Standards Act in this case.

FILING THE CONSENT TO JOIN LAWSUIT FORM

If you wish to participate in the portion of this lawsuit that seeks payment of improperly withheld minimum wages and overtime wages under the Fair Labor Standards Act, you must sign and return the enclosed Consent to Join Lawsuit form to the Clerk of the Court at the address provided below. If you fail to mail a signed Consent to Join Lawsuit form to the Clerk of the Court, you will not be eligible to participate in the Fair Labor Standards Act portion of this lawsuit. Consent to Join Lawsuit forms filed after [90 days from date of Notice] will be rejected unless good cause is shown for the delay.

***IF YOU WISH TO FILE A CLAIM FOR UNPAID MINIMUM WAGES
AND/OR UNPAID OVERTIME PAY UNDER THE FEDERAL FAIR
LABOR STANDARDS ACT AS PART OF THIS LAWSUIT, YOU MUST
MAIL THE ENCLOSED CONSENT TO JOIN LAWSUIT FORM
POSTMARKED BY [90 days from date of Notice] TO:***

Clerk of Court
U.S. District Court for the Southern District of New York
500 Pearl St.
New York, NY 10007-1316

If you fail to mail a signed Consent to Join Lawsuit form by [90 days from date of Notice] you may not be eligible to participate in the Fair Labor Standards Act portion of this lawsuit.

Michael A. Faillace, Esq., of Michael Faillace & Associates, P.C., 60 East 42nd Street, Suite 2020, New York, New York 10065 Tel: (212) 317-1200 Fax: (212) 317-1620 represents the Plaintiff in this case. You will not be required to pay any fee for services provided by Plaintiff's counsel Michael Faillace & Associates, P.C. If you are represented by Plaintiff's attorneys, their costs and fees will be paid out of any recovery against Madison Bistro. You have a right to consult with an attorney about this matter. If you wish to be represented by other counsel, you may retain another attorney, but you will be responsible for paying that attorney. Further information about this Notice, the deadline for joining the lawsuit, the form provided or answers to other questions concerning this lawsuit may be obtained by contacting the Plaintiff's attorney Michael A. Faillace, Esq., telephone number (212) 317-1200, facsimile number (212) 317-1620. If you require Spanish translation, please ask for Michael Faillace, Esq., Yolanda Rivero, Esq. or Pedro Polanco. Any communications with Michael Faillace & Associates, P.C. are **privileged and confidential** and will not be disclosed to anyone without your permission.

***You have a right to participate in this action even if you are an
undocumented alien or if you were paid in cash.***

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT WITH
QUESTIONS INVOLVING THIS LAWSUIT.**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
PABLO TOBIAS NAVARRO, *individually and on
behalf of others similarly situated,*

Plaintiffs,

12 Civ. 6663 (JMF)

-against-

PGM NEW YORK, INC., (d/b/a MADISON
BISTRO) and CLAUDE PHILIP GODARD,
Defendants.

-----X

CONSENT TO JOIN LAWSUIT

Please check ONE of the following options:

_____ I consent to become a party plaintiff in this lawsuit, and I hereby designate the law firm of Michael Faillace & Associates, P.C., 60 East 42nd Street, Suite 2020, New York, NY 10065, telephone (212) 317-1200 as my attorneys.

_____ I consent to become a party plaintiff in this lawsuit, and I wish to proceed with alternative counsel of my choosing, or on my own.

Signature: _____ Print Name: _____

Address: _____

Zip Code: _____ Apt. _____ Phone Number: (____) _____

E-mail: _____@_____._____

THE LAST DAY TO FILE THIS CONSENT TO JOIN LAWSUIT FORM IS

CONSENT TO JOIN LAWSUIT FORMS FILED AFTER [90 Days from date of Notice] **WILL BE REJECTED UNLESS GOOD CAUSE IS SHOWN FOR THE DELAY**

IF YOU WISH TO SEEK RECOVERY OF UNPAID MINIMUM WAGES AND/OR OVERTIME COMPENSATION UNDER THE FEDERAL FAIR LABOR STANDARDS ACT AS PART OF THIS LAWSUIT, YOU MUST MAIL THE ENCLOSED CONSENT TO JOIN LAWSUIT FORM POSTMARKED BY [90 days from date of Notice] TO:

Clerk of Court
U.S. District Court for the Southern District of New York
500 Pearl St.
New York, NY 10007-1316

If you fail to mail a signed Consent to Join Lawsuit form by [90 days from date of Notice], you may not be eligible to participate in the FLSA portion of this lawsuit.